



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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Perkins Coie
700 13th Street, NW, Suite 600
Washington, DC 20005

AUG 02 2018

RE: MUR 7288
DNC Services Corporation /Democratic
National Committee and William
Derrough in his official capacity as
treasurer

Dear Mr. Wilson and Ms. Lopez:

On October 26, 2017, the Federal Election Commission notified your clients, DNC Services Corporation/Democratic National Committee and William Derrough in his official capacity as treasurer ("Committee"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On July 30, 2018, the Commission found, on the basis of the information in the complaint, and information provided by your clients, that there is no reason to believe that the Committee violated 52 U.S.C. § 30125(a). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Delbert K. Rigsby, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink that reads "Mark Allen".

Mark Allen
Assistant General Counsel

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: DNC Services Corporation/Democratic National
Committee and William Derrough in his official
capacity as treasurer
Team Tom
Tom Perez

MUR 7288

I. INTRODUCTION

The Complaint alleges that Tom Perez, Chair of the Democratic National Committee ("DNC"), violated the soft money prohibitions of the Federal Election Campaign Act of 1971, as amended (the "Act"), by using non-federal funds to pay the campaign debts of several of his opponents in the election for DNC Chair.¹

As discussed below, the Commission finds that there is no reason to believe that Respondents violated 52 U.S.C. § 30125(a).

II. FACTUAL BACKGROUND

On December 13, 2016, Team Tom registered with the Internal Revenue Service as a 527 organization to support Perez's candidacy for DNC Chair.² Team Tom disclosed contributions totaling \$918,081 and expenditures totaling \$779,248 during the period from December 13, 2016 through June 30, 2017.³ The contributions were primarily from individuals, with a few from

¹ Compl. at 1.

² See 26 U.S.C. § 527; Team Tom Form 8871 (Political Organization Notice of 527 Status) (Dec. 13, 2016) (attached to DNC Resp. as Exhibit A); Compl. at 2; DNC Resp. at 1. Team Tom's Form 8871 listed its purpose as "[t]o accept contributions and to make expenditures supporting or opposing candidates to federal, state, or local office or office in a political organization," later amended to "[f]or political purposes including to advocate for or against political candidates." Team Tom Amended Form 8871 (Mar. 1, 2017) (DNC Resp. Ex. B). The Complaint alleges that Perez established Team Tom. See Compl. at 2.

³ Team Tom Form 8872 (Jan. 30, 2017); Team Tom Form 8872 (July 31, 2017). We use the terms "contribution" and "expenditure" as the terms are used in the IRS reporting context.

labor unions, PACs and corporations, ranging from \$10 to \$33,400.⁴ Team Tom disclosed salary payments to former and future DNC paid employees.⁵ After Perez won the election on February 25, 2017, Team Tom made donations to three of Perez's opponents from the election: James "Jaime" Harrison, Jehmu Greene, and Sally Boynton Brown.⁶ Specifically, on March 28, 2017, Team Tom donated \$22,271 to Jaime for DNC Chair, Harrison's 527 organization.⁷ On April 3 and April 6, 2017, Team Tom donated \$5,000 each to Brown's and Greene's 527 organizations, We the DNC and Jehmu for DNC, respectively.⁸

The Complaint alleges that, because Perez became both an officer and an agent of the DNC when he was elected Chair, Team Tom's transfer of non-federal funds after that date to Perez's opponents for DNC Chair violated the prohibitions on a national party committee, its officers, and its agents spending, donating, directing, or transferring non-federal funds.⁹ In support of the allegation that Perez was acting with express or implied authority on behalf of the

⁴ See, e.g., Team Tom Form 8872 at 12 (\$33,400 contribution from PAC), 33 (\$10 contribution from an individual) (July 31, 2017) (DNC Resp. Ex. E).

⁵ One individual, Clayton Cox, was a paid staff member of the DNC before Perez's campaign for DNC Chairman with the last salary payments made by DNC on December 15, 2016 and December 30, 2016 for \$2,279 and \$956, respectively. DNC 2016 Amended Year-End Report at 5075 and 5231 (June 1, 2017). The DNC paid \$2,000 to Sam Cornale for GOTV canvassing on November 10, 2016. DNC 2016 Post-General Report at 16129 (Dec. 8, 2016).

⁶ Compl. at 2. According to the Complaint, all three dropped out of the race before the election and endorsed Perez. *Id.*

⁷ *Id.*; Team Tom Form 8872 (Political Organization Report of Contributions and Expenditures) at 69 (July 13, 2017) (DNC Resp. Ex. E); Jaime for DNC Chair Form 8872 at 11 (July 10, 2017) (reporting the contribution as \$22,270). See also Jaime for DNC Chair Form 8871 (DNC Resp. Ex. D).

⁸ Compl. at 2-3; DNC Resp. at 2 and Team Tom Form 8872 at 80, 85 (July 13, 2017); We the DNC Form 8872 at 12 (July 14, 2017). See also We the DNC Form 8871 (DNC Resp. Ex. F). Jehmu for DNC registered as a 527 organization but did not file a Form 8872 disclosure report. See Jehmu for DNC Form 8871 (DNC Resp. Ex. G). The Complaint alleges that Perez maintained and controlled Team Tom at the times it made all three donations to Perez's former opponents. See Compl. at 2-3.

⁹ Compl. at 4.

DNC and not in his individual capacity, the Complaint points to three things. First, it cites a press account in which DNC Communications Director's explains that "Tom had leftover funds after the DNC race and was happy to help other candidates who asked for help with their campaign debt;" according to the Complaint, the fact that the DNC Communications Director commented on Perez's activity is evidence that Perez was acting on behalf of the DNC.¹⁰ Second, it cites a statement in the same press account by Perez's opponent Jaime Harrison that "Tom's staff" asked "if they could be helpful" to Harrison; according to the Complaint, the reference to "Tom's staff" is likely a reference to DNC staff and, therefore, demonstrates that Perez was acting on behalf of the DNC and not in his individual capacity.¹¹ Finally, according to the Complaint, Perez did not act in his individual capacity because he did not use personal funds for the payments to his former opponents.¹²

The DNC responds that the donations were not made by the DNC or on its behalf, were not made for a DNC purpose, and were not controlled by the DNC.¹³ The DNC asserts that it did not establish, finance, maintain, or control Team Tom and states that the sole officer of Team Tom with authority to make those disbursements was Team Tom's Custodian of Records, who

¹⁰ *Id.* at 4 (citing Maggie Stevens, *DNC's Perez Covered Debt of Rival-Turned-Supporter After Chairmanship Race*, POLITICO, July 12, 2017, attached to Complaint as Exhibit A). The DNC Communications Director making that statement, Xochitl Hinojosa, was also identified in Team Tom's initial filing with the Internal Revenue Service as Team Tom's Treasurer, Custodian of Records, and contact person, though Team Tom had a different officer in those positions at the time the donations at issue in this matter were made. See Team Tom Form 8871 (Dec. 13, 2016) (naming Hinojosa); Team Tom Amended Form 8871 (Mar. 1, 2017) (attached to DNC Resp. as Exhibit B and naming different individual as Treasurer, Custodian of Records, and contact person); Team Tom Amended Form 8871 (Mar. 24, 2017) (attached to DNC Resp. as Ex. C and naming yet another individual as Treasurer, Custodian of Records, and contact person).

¹¹ Compl. at 4-5.

¹² *Id.* at 5.

¹³ DNC Resp. at 1. Neither Perez nor Team Tom responded to the Complaint.

was not employed by the DNC and did not act at its direction.¹⁴ The DNC notes that the Complaint does not allege any facts concerning Perez's direct involvement in Team Tom's donations and argues that, even assuming Perez was involved, the donations would have been permissible because the disbursements were related to the Chair's race and were not made on behalf of the DNC itself, in connection with DNC activity, or in connection with an election that is subject to the Act.¹⁵

As for the communications cited in the Complaint, the DNC responds that there is nothing questionable about a DNC staff person fielding a question directed to the DNC or knowing about publicly disclosed donations months after they occurred.¹⁶ Further, the DNC dismisses as "mere speculation" the Complaint's assertion that the reported reference to Perez's "staff" likely referred to DNC staff, noting that Team Tom had its own staff.¹⁷

III. LEGAL ANALYSIS

The DNC, as a national committee of a political party, may not solicit, receive, or direct to another person a contribution,¹⁸ donation,¹⁹ or transfer of funds or any other thing of value, or

¹⁴ *Id.* at 2-4. Team Tom's Custodian of Records during the campaign for DNC Chair, Xochitl Hinojosa, is now the DNC's Communications Director; it appears that she began her employment with the DNC in March 2017 after the election for DNC Chair. *See supra* n.10. Her first salary payment from the DNC is disclosed as made on March 15, 2017. DNC 2017 April Monthly Report at 2714 (Apr. 20, 2017).

¹⁵ DNC Resp. at 1, 4-5.

¹⁶ *Id.* at 4.

¹⁷ *Id.*

¹⁸ A "contribution" includes "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 52 U.S.C. § 30101(8)(A). The election of DNC Chairman is not an election for federal office and so the funds raised and spent for that election are not contributions under the Act. *See* 52 U.S.C. § 30101(1) (defining "election"); 11 C.F.R. § 100.2(a) (defining "election" by reference to federal office).

¹⁹ For purposes of this provision, a "donation" means a "payment, gift, subscription, loan, advance, deposit, or anything of value given to a person, but does not include contributions." 11 C.F.R. § 300.2(e).

spend any funds that are not subject to the limitations, prohibitions, and reporting requirements of the Act.²⁰ This prohibition applies to any such national committee, to any officer or agent acting on behalf of such national committee, and any entity that is directly or indirectly established, financed, maintained, or controlled by such a national committee.²¹

Perez, as DNC chair, was a DNC officer at the time Team Tom (which raised and spent non-Federal funds²²) made donations to Perez's prior opponents.²³ For purposes of the national party committee non-federal fund prohibition, Commission regulations define an "agent" as any person who has actual authority either express or implied, to: (1) to solicit, direct or receive any contribution, donation or transfer of funds, or (2) to solicit any funds for, or make or direct any donations to an organization described in 26 U.S.C. § 501(c) and exempt from taxation under 26 U.S.C. § 501(a) or an organization described in 26 U.S.C. § 527 (other than a political committee).²⁴ The Commission has explained, however, that an agent of a national party committee that is acting on his own and not acting on behalf of the party committee can raise

²⁰ 52 U.S.C. § 30125(a)(1); 11 C.F.R. § 300.10(a)(1) and (2).

²¹ 52 U.S.C. § 30125(a)(2); 11 C.F.R. § 300.10(c)(1). The national party committee non-federal fund prohibition also applies to any entity that is directly or indirectly established, financed, maintained, or controlled ("EFMC'd") by a national committee. *See* 52 U.S.C. § 30125(a)(2); 11 C.F.R. § 300.10(c)(2); *see also* 11 C.F.R. § 300.2(c) (defining "directly or indirectly establish, finance, maintain, or control"). While the Complaint alleges that Perez EFMC'd Team Tom, the Complaint does not allege, or provide facts in support of a finding, that *the DNC* EFMC'd Team Tom. *See* Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49064, 49088 (July 29, 2002) ("Soft Money E&J"); Advisory Opinion 2004-25 (Corzine) at 2 ("the plain language of both the Act and the Commission's regulations specifically limit application of these restrictions to national party committee officers and agents only when such individuals are acting on behalf of the national party committee").

²² *See* 52 U.S.C. § 30125 (a)(1) and 11 C.F.R. § 300.2(k); 52 U.S.C. §§ 30116 (a) and 30118(a); *see also supra* n.4 (citing a report indicating Team Tom's receipts from prohibited sources and in amounts exceeding the Act's limits).

²³ *See* DNC Services Corporation, *Our Leaders*, <https://www.democrats.org/person/tom-perez> (last visited June 27, 2018) (listing "Tom Perez, Chair" first under the "DNC Officers" heading).

²⁴ 11 C.F.R. § 300.2(b)(1)(i) and (ii).

non-federal funds for other political parties and outside groups.²⁵ In particular, the Commission has addressed circumstances where a national party official may wear multiple hats, explaining that a national party committee officer may raise non-federal funds for a state party committee, for example, if not acting as an agent of the national party committee.²⁶

Upon becoming Chair of the DNC, Perez presumably had authority to raise, spend, donate, or transfer funds on behalf of, or as an agent of, the DNC in some capacity due to his status as chair. But the Commission has made clear that this status is not sufficient to establish the agency relationship, explaining that "it is not enough that there is some relationship or contact between the principal and agent; rather, the agent must be acting on behalf of the principal to create potential liability for the principal. This additional requirement ensures that liability will not attach due solely to the agency relationship, but only to the agent's performance of prohibited acts for the principal."²⁷ While the available information does not indicate Perez's specific role in the formation and operation of Team Tom, his close relationship with Team Tom is indicated by his website, www.tomperez.org. The website, which relates solely to Perez's campaign for DNC Chair, with a banner, "Why I'm Running for DNC Chair," contains a Team

²⁵ See Definition of "Agent" for BCRA Regulations on Non-Federal Funds or Soft Money and Coordinated and Independent Expenditures, 71 Fed. Reg. 4975, 4979 (Jan. 31, 2006).

²⁶ See Soft Money E&J, 67 Fed. Reg. at 49083 ("individuals, such as State party chairmen and chairwomen, who also serve as members of their national party committees, can ... wear multiple hats, and can raise non-Federal funds for their State party organizations without violating the prohibition against non-Federal fundraising by national parties"); see also *McConnell v. Federal Election Commission*, 540 U.S. 93, 157 (2003) (noting that national party non-federal fund prohibition does not restrict national party officials from soliciting non-federal funds in their non-individual, official capacities as officers of state party committees, if they simultaneously hold such offices in addition to national party office); Advisory Opinion 2004-25 (Corzine) at 2 (concluding that a national party committee officer's donation of personal funds made solely at his own discretion, without express or implied authority from, or on behalf of, the national party committee for which he is an officer, would not be acting on behalf of that national party).

²⁷ Soft Money E&J, 67 Fed. Reg. at 49083.

Tom logo and a disclaimer that it is paid for by Team Tom.²⁸ Nevertheless, the available information does not indicate that Perez was acting as an agent of the DNC when Team Tom, a separate entity, donated funds to his opponents for DNC Chair.

Nor does it otherwise appear that Team Tom was established, financed, maintained or controlled by the DNC. For example, the DNC never disclosed any payments to Team Tom. Nor does the available information indicate that the DNC played a role in fundraising for Team Tom, or that the DNC paid or otherwise controlled Team Tom's officers.²⁹ Therefore, the Commission finds that there is no reason to believe that Perez, the DNC Services Corporation/Democratic National Committee, or Team Tom violated 52 U.S.C. § 30125(a).

²⁸ See <https://www.tomperrez.org>.

²⁹ See *supra* n.14 (Xochitl Hinojosa). Nor did the DNC pay the other individuals who served as Team Tom officers, Sonja Hoover and Jane Farrell, while they held those positions. See Team Tom Amended Form 8871 (Mar. 1, 2017, Mar. 24, 2017) (DNC Resp. Exs. B and C).